IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 25 OF 2004

Sangayya Panchkatti Matt,
Son of Chandrayya Panchkatti Matt,
resident of Lokhapur Village,
Mudhai Taluka, Bagalkot District,
Karnataka State. ... Appellant

versus

State ... Respondent

Mr. A. Palekar, Advocate for the Appellant.

Mr. S. N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM : V. M. KANADE, J.

DATE : 23RD JUNE, 2005.

ORAL JUDGMENT

The Appellant/Original Accused is challenging the Judgment and Order passed by the 1st Additional Sessions Judge, Panaji in Sessions Case No. 7 of 2002. By the said Judgment and Order dated 25th May, 2004, the Additional

Sessions Judge was pleased to convict the Appellant for the offence punishable under Section 307 of the Indian Penal Code and sentence him to undergo Simple Imprisonment for 2 years and also impose a fine of Rs.2000/- and in default to undergo Simple Imprisonment for a further period of 2 months. The Additional Sessions Judge also convicted the Appellant for an offence punishable under Section 185 of the Motor Vehicles Act, 1988 and to undergo Simple Imprisonment for 3 months and to pay a fine of Rs.1000/- and in default to undergo Simple Imprisonment for a period of 1 month.

2. The prosecution case in brief is that on 30-3-2001 at about 4.10 hours the Accused was driving a Tata Estate Car and at that time was under the influence of alcohol and in this condition he deliberately tried to knock down Police Inspector S. R. Goltekar of the Porvorim Police Station who was on night duty at the relevant time. The prosecution case is that the Police Inspector, however, saved himself by jumping aside. The prosecution case further is that the Accused thereafter was apprehended and his blood sample was taken and it is believed that he was under the influence of alcohol. The prosecution case, therefore, is that the Appellant tried to commit murder of

Police Inspector S. R. Goltekar and also committed offence under the Motor Vehicles Act, 1988. A charge-sheet was filed after investigation was made by the Police. The Accused pleaded not guilty to the said charge. The prosecution examined 9 witnesses. The trial Court on the basis of the evidence adduced by the prosecution convicted the Accused for the offence punishable under Section 307 of the Indian Penal Code and under Section 185 of the Motor Vehicles Act, 1988.

3. I have heard Mr. A. Palekar, learned Counsel appearing on behalf of the Appellant and Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the State.

4. The learned Counsel appearing on behalf of the Appellant has taken me to the Judgment of the trial Court as also to the evidence adduced by the proseution. He has submitted that the trial Court after having given a finding that the Accused did not have the intention to knock down P.W.5, Subash Goltekar, had committed an error in holding that the Accused had committed an offence punishable under Section 307 of the Indian Penal Code. He submitted that the trial Court had not properly appreciated the evidence on record and had erred

in coming to the conclusion that the Accused had committed an offence punishable under Section 307 of the Indian Penal Code. He further submitted that there were several lapses in the prosecution case as the spot panchanama was not prepared by the Police and further that the prosecution has not proved beyond reasonable doubt that the Accused had attempted to commit a murder of P.W.5, Subash Goltekar.

5. The learned Public Prosecutor appearing on behalf of the State has submitted that the prosecution had proved beyond reasonable doubt that the Accused was under the influence of alcohol and was driving a Tata Sumo vehicle and when he was asked by the Patrolling Officer to stop his vehicle he had tried to knock down the said Police Officer. He submitted that if the said Police Officer had not jumped aside he surely would have died. He, therefore, submitted that though there may not be any motive for having committed the said offence, the intention of the Accused was very apparent. He submitted, therefore, that the trial Court had correctly assessed the evidence on record and had convicted the Accused for an offence punishable under Section 307 of the Indian Penal Code. He submitted that the finding given by the trial Court was based on clear and cogent

evidence given by the prosecution witnesses and, therefore, there was no reason to interfere with the said Order passed by the trial Court.

6. P.W.5, Subash Goltekar, in his evidence has stated that on 30-3-2001, he was assigned the work of patrolling at night in the Porvorim jurisdiction from 1.30 a.m. He has stated that along with him his staff, namely, P.S.I. Asare, H. C. Naik, Constable Dhuri and driver Guru Naik were also present. On their patrolling duty and on travelling in a jeep at about 4.10 hours they received a wireless communication from P.I. Banaulikar who informed them that one Tata Estate vehicle had overrun a barricade placed for nakkabandi and that even after the signals were given to the driver to stop the vehicle, the vehicle had proceeded towards Porvorim and that the said Banaulikar was following the vehicle. P.W.5, Subash Goltekar, therefore, asked his driver to stop their vehicle on the left side of the road at Porvorim. This place was about 200 metres from Hotel Angels on the Chogam road facing Sangolda. He has further stated that he got down from the jeep along with his staff and was standing on the road by the side of the jeep. According to him, after some time, the Tate Estate vehicle came

from Sangolda direction towards them. He, therefore, signalled the vehicle to stop. However, inspite of the signal given the vehicle continued to come forward and he, therefore, jumped out of the road to save himself. He has further stated that the driver instead of stopping the vehicle had increased the speed and had come in his direction. According to this witness thereafter the jeep of Calangute Police Station came there in which P.I. Banaulikar was sitting in the vehicle along with his staff. P.I. Banaulikar thereafter continued the chase and this witness also followed him with his jeep. He has further stated that at 'O Coqueiro' junction there was another nakkabandi and even at that junction the Accused disobeyed the signal which was given by the traffic Police and proceeded towards B. B. Borkar road. Thereafter, the third jeep of Panaji Police Station also followed the Tata Estate car. Finally, when they came near the new Secretariat building they saw that smoke was coming out from the Tata Estate car and both the occupants got down from the car and were immediately taken in custody by the Police. Immediately thereafter, the car caught fire, Fire Brigade was called and they extinguished the fire. However, the car was totally burnt in the said fire. At the Police Station, the Appellant/Original Accused and Sanjay Jadav who were the

other occupants of the car were subjected to the alcometer test and the said test revealed that the Accused was found having alcohol in his blood to the extent of 88 mg. Thereafter, a panchanama was drawn and a complaint was lodged by this witness. From the statement of this witness, it can be seen that neither this witness nor any other witness were injured in the car chase. The evidence of this witness indicates that the Accused was driving his vehicle under the influence of alcohol and had jumped number of signals though he was asked to stop. Even if the testimony of this witness is accepted in its totality from the evidence of this witness, it cannot be said that Accused had tried to commit murder of P.W.5, Subash Goltekar or any other traffic Police who had signalled him to stop. From the evidence of this witness, it can be seen that the Accused was driving the vehicle at a high speed under the influence of alcohol and did not stop the vehicle though he was asked to do so by the Police. The prosecution in order to corroborate the testimony of P.W.5, Subash Goltekar, has examined P.W.4, Shantaram Naik, P.W.3, Arjun Ramchandra, P.W.2, Ram Asare, P.W.6, Gurunath Ganesh Naik, P.W.8, Deu S. Banaulikar and P.W.9, Ganapat Patil, who was the P.S.I. attached to Porvorim Police Station. The prosecution has also examined P.W.7, Vinayak Shankar

Alornekar, who recorded the statement of Sanjay Jadav under Section 154 of the Code of Criminal Procedure. P.W.7, Vinayak Shankar Alornekar, recorded the statement of Sanjay Jadav who was the other occupant of the car which was driven by the Accused. All the other witnesses either P.W.5 or others such as Banaulikar who had given intimation to P.W.5, Subash Goltekar about the Tata vehicle have corroborated the testimony of P.W.5, Goltekar in almost each and every aspect. In my view, even if the testimony of all these witnesses is accepted, it is difficult to arrive at a conclusion that the Appellant/Original Accused had attempted to commit a murder of P.W.5, Goltekar or for that matter of any other person. At the highest, it can be said that he had committed an offence of driving the vehicle in a rash and negligent manner after having consumed alcohol and had violated the Traffic Rules as framed under the Motor Vehicles Act, 1988. From the evidence of P.W.5, Goltekar and the other witnesses examined by the prosecution, it can be seen that at no stage the Accused had driven the vehicle off the road in order to give a dash or to knock down either any Police Officer or any member of the public at large. Merely because the Accused had not acceeded to the request and order given by the traffic Police to stop the vehicle that by itself would not constitute an offence

punishable under Section 307 of the Indian Penal Code. In order to bring an act within the purview of Section 307 of the Indian Penal Code it has to be established that the Act was such from which it could be inferred that an attempt to commit murder had been committed. From the present facts on record, it cannot be said that the Accused had committed an offence punishable under Section 307 of the Indian Penal Code. Firstly, either P.W.5, Goltekar nor any other traffic Police was injured nor had sustained any injury nor the Accused had broken the barricade of the Police. There is no evidence on record to indicate that the Accused had driven the vehicle on the person of P.W.5, Goltekar or had chased P.W.5, Goltekar with an intention to knock him down. The trial Court in my view, has committed an error in coming to the conclusion that the Accused had committed an offence punishable under Section 307 of the Indian Penal Code particularly the trial Court had recorded a specific finding that the Accused did not have any intention of committing the murder of P.W.5, Goltekar or for that matter of any other person. Thus, the Appellant/Original Accused is liable to be acquitted of the offence punishable under Section 307 of the Indian Penal Code.

7. However, in my view, the trial Court was justified and has given a clear finding that the Accused has committed an offence under Section 185 of the Motor Vehicles Act, 1988. The said finding, therefore, of the trial Court is confirmed. However, in my view, the sentence of imprisonment for 3 months is liable to be set aside as the Accused has neither damaged any property nor committed any accident and had stopped the vehicle which had caught fire immediately and was completely burnt.

8. In view of these facts, in my view, the sentence of imprisonment for 3 months is set aside. However, his conviction under Section 185 of the Motor Vehicles Act, 1988 is confirmed as also the imposition of fine of Rs.1000/- and in default Simple Imprisonment for a period of 1 month is confirmed. The Appeal is accordingly partly allowed in the above terms.

V. M. KANADE, J.

RD.